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In re Application of PRADES et al :
U.S. Application No.: 10/587,058 :
Attorney Docket No.: 31223.00130 : DECISION
For: ACTIVATING SUPPORTS FOR :
METALLOCENE CATALYSIS :

This is in response to applicant's petition under 37 CFR 1.181 filed 18 September 2009.

BACKGROUND

On 21 July 2006, applicant filed application papers in the USPTO. The submission was assigned the above-identified U.S. Application Number.

On 18 September 2009, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

37 CFR 1.495(g) states, "The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a)."

In the present case, the papers filed 21 July 2006 were not clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Although the paper titled "Express Mail Certificate of Mailing" lists a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US)", such transmittal letter is not present in the application file. Also, the listing of the international application number and the international filing date and the fact that the papers were sent to Mail Stop PCT does not preclude the filing of a common bypass application under 35 U.S.C. 111(a). See MPEP 1895. Although the executed declaration does state that it is directed to a national stage application, such declaration was not present at the time of filing.

Furthermore, the fee transmittal sheet (Form PTO/SB/17) not only fails to indicate that a submission under 35 U.S.C. 371 is being made but also contains information which is consistent with a filing under 35 U.S.C. 111(a). For instance, Form PTO/SB/17 contains a statement authorizing the USPTO to charge additional fees under 37 CFR 1.16 and 1.17. However, the filing fees for a 35 U.S.C. 111(a) application are set forth in 37 CFR 1.16 whereas the filing fees for a national stage application are set forth in 37 CFR 1.492. Furthermore, Form PTO/SB/17 lists \$500.00 for the search fee, which is consistent with an application filed under 35 U.S.C. 111(a) but inconsistent with a national stage application wherein the search report was prepared by the European Patent Office and provided to the USPTO, as in the present case.

Because the papers filed 21 July 2006 did not contain a clear indication that the submission was being made under 35 U.S.C. 371, the application was properly treated as a filing pursuant to 35 U.S.C. 111(a).

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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